

# ARGUMENT

OR

HON. JOSIAH G. ABBOTT,

IN BEHALF OF

THE PETITIONERS

BEFORE THE

JOINT SPECIAL COMMITTEE

OF THE

Legislature of Massachusetts,

ON THE

PETITION OF C. P. TALBOT AND OTHERS.

PRAYING FOR THE

REPEAL OF THE ACT OF 1860 FOR THE REMOVAL OF THE DAM  
ACROSS CONCORD RIVER, AT BILLERICA.

March 13, 1862.

PHOTOGRAPHIC REPORT BY MESSRS. YERRINTON AND BACHELER

BOSTON:

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*Mr. Chairman, and Gentlemen of the Committee :—*

I know you will permit me now to congratulate you, after having spent so long a time, and listened so patiently and carefully to the evidence and arguments on the one side and the other of this important case, that we have approached so near the close and termination of the hearing, which of necessity must have so severely tested your patience. And I will endeavor, gentlemen,—I say it in all fairness and frankness to you,—I will endeavor to take no larger portion of your time, in addressing to you the remarks which I am called upon to make in closing this case, than is absolutely necessary for the purpose of distinctly putting before you the claims, the arguments, and the positions of the petitioners, which they desire you carefully to examine and consider, believing as the result of such examination and consideration, you will be constrained to recommend what they ask for, a repeal of the law of 1860, providing for taking down their dam across the Concord River.

## THE GROUNDS OF THE PETITIONERS UNCHANGED.

And I trust, gentlemen,—and I think I have a right from my experience to say it,—I trust the argument may not seem quite so tedious and quite so wearisome to you as it does to me. For, notwithstanding what my friends have undertaken to charge here, from the opening on the part of my brother Griffin to the close on the part of my friend who addressed you yesterday, [Mr. French,] that we have changed our ground, that we began in 1859 with one position, telling one story, and claiming one result, that we changed in 1860, putting ourselves upon other grounds, and now, that we have come here, in 1862, still changing our ground, and taking a different position,—I have to say

to you, gentlemen, now, that the great trouble with myself is, and some of your Committee who are of our profession will appreciate it,—that so it is that notwithstanding these complaints from the other side, I am again, for the third time, obliged to repeat myself. Having on two different times had the opportunity and the occasion, in the line of my duty, to address other committees and other bodies upon this same subject, I am obliged now to go over again, the third time, with a thrice-told tale. I am again obliged, sir, to repeat myself. And this is really the trouble I am laboring under, not that I am obliged to change and resort to new positions—but that I am again and again obliged to repeat myself, than which, as some of you gentlemen of the Committee know, nothing is more tedious and wearisome to a speaker. I beg of you to give to this matter a little of your time and attention, considering the charges made of change of position, and after you have listened and heard what I shall have to say now, that you will look at the argument made by me last year, which was printed, and which I have never seen from the time it was made till my attention was called to it by my friends on the other side; and I will agree to abandon this case, gentlemen, if you do not find that the grounds and positions I take here now for my clients are substantially the same grounds and the same positions taken then.

I trust too, gentlemen, and I desire to say it now in advance, because now, in going over this matter, and in undertaking to sum up the arguments upon one side and the other, I may happen to pass over many matters that have been put in evidence, and alluded to in the arguments in this case, I trust, gentlemen, that you yourselves will not pass over such matters because I do, but give them all due weight and consideration. There are many and various matters in a case of this kind, where the testimony covers four, five, or six hundred pages, and where the considerations are so varied, which have their effect at the time when they are put in, and when they are before the Committee, but which we know it is absolutely and utterly impossible, in the course of an argument in summing up, even to allude to. I only refer to this, gentlemen, to say, that if I do not allude to all the details and minutiae of the evidence, I trust your Committee will not consider that it is because I think that part of the case

passed over unimportant. I can only call your attention to some general considerations, some general matters bearing on the subject before you, and leave to you the full and careful examination which I have no doubt you will give, of all that has been put in, on the one side and on the other, bearing upon the subject of your investigation.

#### HISTORY OF THE CASE—CLAIM OF THE MEADOW-OWNERS.

And now, gentlemen, to come to the case before you. It is exceedingly important,—and I think, in this case, after you have done what I propose to do, you have really examined the whole case,—it is exceedingly important to look at the history of these proceedings, to see how they originated, and to know what the parties asked for who first obtained the passage of the Act, for the repeal of which we are now seeking, and to examine the ground upon which they put their case.

This matter commenced in 1859. You will see, by referring to the papers, that in 1859, a petition was presented here, signed by the selectmen, in behalf of the citizens of the towns of Sudbury, Wayland and Concord, and, I think also of Bedford and Carlisle, although we have heard very little here from the two last named towns, the petition and claim having been mainly prosecuted by the towns of Wayland and Sudbury, with perhaps some help from the town of Concord. The prayer of that petition was, that a right might be given the petitioners, the owners of the meadows on the Concord and Sudbury Rivers, to prosecute for the injury they had received at the hands of the owners of the dam at Billerica. And now I ask your attention, gentlemen, carefully, to the precise ground upon which action by the legislature was asked for by those petitioners, as you will find it set out in the petition of the several towns; all the other petitions being merely in aid of their petition; the petition on which the legislature of 1859 appointed a committee to sit during the recess. Now, gentlemen, what was the ground of their complaint? Why did they ask the interference of the legislature? How did they then put their case? Why did they then ask the legislature to come to their aid, to interfere, and do any thing?—and I shall have occasion to allude, directly, to what they did ask the legislature to do. Why did they ask the legislature to do something to

relieve them? Why, sir, at that time, they asked the legislature—and I invoke you to read every word of the main petition and those in aid of it—to come to their aid, and do something to remedy the evils they were laboring under, because, they said, the legislature in 1793, when they passed the Act incorporating the Middlesex Canal, had authorized that corporation, under which we claim here, to do an act which resulted in the utter and entire destruction of their property, to the extent of one or two millions of dollars. They invoked the aid of the legislature, not, sir, upon any ground taken now. My friends claim, here, that I have changed my ground, while in fact the only change is made by them, they now putting their claim upon the ground that there is a dam upon the Concord River, at the Billerica Mills, which prevents improvements in the natural condition of their lands; while, up to this time, they founded themselves entirely upon the alleged fact that a dam had been raised at Billerica in 1793 and 1828, which raising had flooded and destroyed their meadows, till then very valuable. So it was, they tell us, that, in 1793, by improvident legislation, obtained by means of the lobby and corruption,—a most remarkable charge, by the way, to be made against our good fathers of that day, without a particle of proof to sustain it,—an Act was passed creating the Middlesex Canal Corporation, under which those acting under it were enabled legally not only to injure, but substantially to destroy, their property, to the extent of a million of dollars. Farther and worse, they go on to claim, as an additional reason for legislative aid now, that the Act of 1793 not only authorized the destruction of the meadows, but really provided no feasible method of compensation for such destruction, so that, in fact, all this property was so ruined without a cent being paid for it. And this was the strength of the claim for present action: that their property had been injured to the extent of one or two millions of dollars, (a most monstrous exaggeration, as I shall show, shall demonstrate to you hereafter,) by virtue of an Act of the legislature of 1793, which had provided no practical remedy for obtaining compensation for such injury. And so passionately is this charge made, that they even take credit to themselves that they have preserved their loyalty, and remained obedient and law-abiding citizens, under so crushing a load of injustice and tyranny.



I beg your attention, gentlemen, most especially to this claim of the petition, that property had been destroyed under an Act of the legislature, without proper compensation being provided for such destruction, as the very groundwork upon which was to be based the proposed action, then asked for.

Why, gentlemen, this is the very soul and spirit of the whole petition, the only vitality there is in it; without it, the petition would be but the merest dull and lifeless body,—this, and this alone, is all that breathes life and soul into the claim. “You,” they say, “the law making power, the sovereignty of Massachusetts, have, by the exercise of that power which could not be gainsaid or resisted, taken from a portion of your citizens their property, and have not provided any compensation for such deprivation. You have injured them to the extent of more than a million of dollars, and so cunningly devised the act by which such injury was worked, that not a cent has ever been recovered or received for such wholesale destruction.” Therefore it is, and therefore only it is, as they urge, that the legislature are bound in all fairness, and justice, and honor, to come in and furnish some kind of aid, some kind of remedy to these parties who have been injured by their former action. They tell you the Act of 1793, in truth and fact, though not in the letter, was in direct violation of the Constitution, which provides that private property shall not be taken for public uses without due compensation, and therefore you are bound now, however late it may be, to right this injustice. And then, if you leave the petitions and go to the hearing before the legislative committee who sat after the adjournment, and spent some twenty or thirty days, more or less, in investigating the questions arising under those petitions, you find the whole of the testimony was brought to bear upon the claim just referred to. If you have examined the large book in which the evidence is reported—I know some of you were in the legislature of last year, and must have been called on to give it some examination—the whole testimony, upon the one side and the other, substantially bears upon these questions: Did the Middlesex Canal Corporation in 1798, and again in 1828, raise, under their Act of incorporation, the dam at the Billerica Mills, and by that raising did they flood out the meadows in question, more than three-quarters of which were situate in the towns of

Sudbury and Wayland, as now claimed by my friends on the other side? Did that corporation, by their act in raising the dam in 1798 and keeping it up from that time, and raising it again in 1828 and so keeping it up down to this day, throw back the water upon those meadows which formerly had been dry, and the best lands in the bounds of the two towns, and upon which the hay-making, they told us, “resembled the vintage in the South of France”? The claim was, by such raising and consequent flowing, these meadows were reduced to a mere swamp and bog, and that the water was raised in its “ordinary stage two feet at least,” more than twenty miles from the dam. The claim was not then, as my friends would now have you believe, that the troubles upon these meadows, which makes them of little value, arose mainly from natural obstructions and artificial causes other than the dam, and that they could not be obviated excepted by its removal; but the claim, and the only claim, was that the raising of the dam in 1798 and in 1828 had injured the meadows to the extent of one or two millions of dollars, for which remedy ought now to be provided. The claim was that up to 1798 the meadows were most valuable, almost a paradise; that then, and again in 1828, the Canal Corporation raised their dam under an Act of the legislature, and flooded the water back upon them, not preventing a prospective improvement, but doing them a then present injury of great magnitude: indeed, that by such raising and the consequent flooding, they were reduced from the value it was claimed they bore half a century ago of at least one million dollars, to utter worthlessness.

I don’t desire, gentlemen, to weary you by reading or referring too much to the voluminous publication of the testimony and petitions, but I must call your attention to one of their claims, made on page sixteen of this petition, where they set forth, in the first paragraph, that “This entire tract, belonging to us, fifty-five or six years ago, together, was worth in the market a million of dollars, and at the present day would be worth two millions of dollars.” They had before claimed that it was at the present time of little or no value—indeed, utterly worthless. And then, as a summing up, they go on to say, on the same page, that “*this depreciation was wholly chargeable to the Middlesex Canal Corporation.*”

But that is only one single instance of what appears in their petition, and in that voluminous report of the evidence. • That is but a general statement of what was claimed and contended for in 1859: what was claimed and contended for in 1860, and again in 1861, and what was claimed and contended for always until the facts, the experiments which have been made, demonstrate beyond all possibility of doubt, and all peradventure, that the claim is utterly without foundation and utterly baseless, in reference to the greater part of the land in reference to which that claim had been made.

Well, gentlemen, farther than this,—because, as I said before, it is necessary to pursue this subject and exhaust it, and when we have fairly examined it in all its bearings, and seen precisely on what grounds this legislation of 1860 was asked for, why the Act was passed, we have to a very great extent examined and mastered all there is in this case,—farther than this, I beg you to look at the Report of the legislative committee of 1859, appointed to sit during the adjournment. You will find in the Report of that committee no reference to any action which is not based upon the claim of the petition before referred to. They find that the raising of the Middlesex dam, under the Act of the legislature of 1793, was an efficient cause—other causes, to be sure, there were—of the injury to this vast quantity of land, 8,000 or 10,000 acres, as they put it. They find, also, that, in fact, there had never been any compensation under that Act, awarded to, or recovered by, the people whose land had been flooded and destroyed; and, therefore, first, because the Middlesex Canal dam and the raising of the dam had flowed these meadows, mainly situate in Wayland and Sudbury, and secondly, because no compensation had been recovered for such flowing, the committee recommend action by the legislature. I say, these meadows, mainly situate in Sudbury and Wayland, because I take my friend who opened on the other side at his word, when he told us, at the same time introducing that telling illustration from Hood, of the man who set his own shirt tail on fire, that the complaint mainly came from those towns, because more than three-quarters of all the injured meadows were there situate; I say again, I am content to take my friend at his word, and assume it as an undoubted fact, leaving out, however, the illustration, which I must say I cannot entirely

and fully appreciate, that more than three-quarters of all the meadows in reference to which your aid has been invoked are situated in those two towns.

Let me quote the words of that committee: "We recommend action for two causes; mainly because injury has been done under the Act of the legislature, and because that legislation was so improvident that nobody has obtained compensation for that injury." That was the Report of the committee of 1859. That was the why, gentlemen, the legislature of 1860 were recommended to do any thing in this matter; because those under whom my clients claim, under an Act of the legislature of this Commonwealth, had flooded the lands in Sudbury and Wayland, and because, under that Act, the land-owners had never received any compensation for such flooding and consequent reduction in value of their property, the legislature are recommended to interpose; and to give to the children, out of the public treasury, some compensation for the losses suffered by their fathers. This is recommended as an act of justice, and simply justice, and by no means on the ground that public policy requires the interposition of the State to enable the owners to improve the natural condition of their lands. You have reduced, say our friends on the other side, drawing on their imaginations, as is their wont, for their facts, our land, which would be, but for your act, an almost earthly paradise, whose beauties should be embalmed in song, and so go down to remote generations, to an unsightly bog and an unhealthy quagmire; and so say the committee, because this has been done without compensation, you must now do tardy justice.

And then, gentlemen, what do you find was the ground taken by the committee of 1860? This Report of the committee of 1859 was made to the legislature of 1860, was committed to a committee of the legislature of that year, and that committee, never having had any meetings where the parties, at least where my clients were present, they never having given them a chance to appear personally, or by counsel, and defend their rights, never having given them, gentlemen, that chance which, under our form of government, is given to the humblest individual before his rights are passed upon, which is given to one who is guilty of the most atrocious crime—the chance of being

heard before being condemned ; I say, that committee undertook to report this law, of which we now ask a repeal at your hands. And why do they report this law ? Why, gentlemen, they put it upon grounds distinct, clear, and certain, upon grounds which the facts now show are entirely untenable ; they came to conclusions which the experiments now show conclusively are wrong, and without any foundation in fact—conclusions founded on an entire misapprehension of the testimony, and entirely unsupported by a single fact.

Look at the Report of the committee, gentlemen. They say that the finding of the committee of 1859 was fully sustained by the evidence, and that nearly ten thousand acres of the best land in the eastern part of the State had been ruined by the dam at Billerica. Why did not that committee, Sir, before they talked about ten thousand acres, listen to a little evidence, and examine the matter a little more carefully ? They find “ that the dam erected by the Middlesex Canal Corporation is an efficient cause of the flowage of nearly ten thousand acres of the most valuable land in the eastern section of the State ; ” that this immense injury to those lands has been actually accomplished by the Canal Corporation, under the charter, without the payment of a single cent of damages to the land-owners for the injury. Such are the grounds, gentlemen, upon which the committee reported this Act of which we ask the repeal. Say they, we have ruined—that is, our predecessors, the Middlesex Canal Corporation, of whom I speak as my clients, in fact, because we claim under them—beginning in 1798 and increasing in 1828, and so going on down to the present time, have by their acts ruined ten thousand acres of the best land in the Commonwealth, without paying a cent of compensation for such destruction. And such are the reasons for the law they recommend. A wholesale destruction of private property authorized by an Act of the legislature, without the payment of compensation ; and the charter of the Corporation doing this damage having been forfeited, the only course is for the Commonwealth now to come in and pay for the necessary consequences of their own law. They tell us that this injury has been done by a law, in violation of the provisions of the Constitution, which was enacted hastily, improvidently, without due consideration, and therefore they have “ deemed it just, and only just, to the

meadow-owners, to give them some redress for this improvident legislation ;” and further they say, “ it is based on the principle that the Commonwealth should do justice not only to the petitioners but to all its citizens. That it owes a debt to the owners and ancestors of the present owners of these lands for sixty years’ depreciation of their annual crops. That it cannot restore this to these men, but it can, by the passage of the bill reported, render them in the future, some satisfaction for past injuries.” The proposition, then, is to give these meadow-owners redress. For what injury, for what wrong? Why, to give them redress for the damages occasioned at our hands, from raising the water in Sudbury and Wayland upon their meadows, for which they had never received any compensation. The whole recommendation is based upon the principle, that in this Commonwealth, no one shall have his property taken or injured for public uses, under the authority of law, unless at the same time full compensation is provided for such taking or injury.

Don’t you see, gentlemen, that beyond all peradventure, that such was the only reason given by the Committee for their recommendation? Why, it is so patent, it is so written upon the whole of the five or six hundred pages of that report, and of all the other reports that have been made, that “ he who runs may read,”—it is from the beginning the burden of the complaint, and it has so continued down to the present time. So it is we are told, that the legislature of the Commonwealth have authorized the creation of a corporation who have raised and kept up the dam at Billerica, and in that way have raised and kept up the water, as the most moderate witnesses testified, two feet at the meadows in Sudbury and Wayland, so reducing that most valuable and beautiful land to a bog and quagmire of no manner of worth to any one. And this, we are told, has been done without compensation. Therefore we are told, and therefore the committee in 1860 say, “ We give you compensation from the treasury of the Commonwealth ;” on the ground, gentlemen, upon no other ground, that the Commonwealth has done the whole injury, for which no compensation has been paid. Now, gentlemen, have you any doubt as to what constituted the sole and only reason for the passage of the law of 1860 ?

I invoke you, gentlemen, if you have patience, and can spare the time for doing it, to begin at the beginning of the first long report of evidence, and of all the reports, and wade through, most carefully, the whole of the six or seven hundred pages,—and, I say again, if you do not find that all the action that is asked for is based upon the proposition I have referred to, I should be almost willing to abandon the case. All the petitioners ask for the interference by the legislature, because by law the Middlesex Canal were authorized to raise their dam in 1798 and 1828, and by so doing have flowed back the waters of the river, in Sudbury and Wayland, at least two feet, without paying any damages therefor. One of the witnesses, indeed, who is nearly as tall as I am, goes so far as to say that where, in Sudbury, sixty years ago, he could drive a four-horse team without miring an inch, the water is now so raised by the Middlesex dam that it stands, in its ordinary summer stage, above his head! And he only shows, gentlemen, how the imagination, looking back through the long vista of years, can enlarge and magnify all the occurrences of the past.

#### ANSWER TO THE CLAIM.

Such was the whole claim, from beginning to end, and I ask you if I have not stated it fairly? And now, gentlemen, what was our answer to this claim? Why, according to the present aspect of this case, and the way it has been argued by my two friends who have preceded me on the other side, we have, up to this time, been acting upon a great and magnificent mistake. The committees of the legislature, and the counsel upon one side and the other, up to this period, have been spending all this time and money upon the supposition that the sole inquiry was whether this dam at Billerica Mills, now owned by my clients, had flowed back the waters of the Sudbury River, in Sudbury and Wayland, some two feet—the most subdued estimate, as you will find, heretofore given by the witnesses from Sudbury and Wayland. And that has always heretofore been the subject of our inquiry. Our claim, gentlemen, was this: we told these men from the beginning—I invoke you again to read, if you have patience, every word that I have said upon this subject, from the beginning to the end, whenever I have appeared before any committee, or any body, and see if

I have changed, or do now change, by a hair's breadth, the ground I take here for my clients:—we claimed in 1859, we claimed in 1860, we claimed in 1861, and we now claim before you, gentlemen, in 1862, this: that our dam at Billerica had not been raised, was not raised in 1798, nor in 1828; and further, and more especially,—and this, sir, was the great question which we always made, and of the truth of which we always tried to convince the legislature, successfully so last year, I think, and which is now demonstrated to be true by the experiments of the Commissioners of 1862,—we claimed that the dam at Billerica Mills—raised in 1798, or raised in 1828, if you please, I don't care if it was built anew in 1798 or 1828—that the dam did no substantial harm, did no substantial injury, gentlemen, to the meadows above it. We claimed that, as far as Sudbury and Wayland were concerned, as far as those towns and those persons from whom came this complaint of a half-a-century's standing, that there never had been, gentlemen, the smallest fraction of an inch of water raised by that dam upon their meadows.

That was our claim; and to prove that claim our evidence was introduced. Why, it was understood, gentlemen, it was perfectly well known, that unless the legislature could be convinced that through their agency in 1793 the property of the inhabitants of the towns of Sudbury and Wayland had been injured and destroyed as they claimed, and that without compensation,—unless that proposition could be proved, no body of men who were ever entrusted with the responsibilities and duties of legislation in this Commonwealth would ever think of interfering with the property of a private citizen, or the property and prosperity of any town, more especially when such interference was to be at the cost of the public treasury, and not of those to be benefited by such action.

Such then, gentlemen, was the inquiry on the one side and the other. I beg of you to examine most carefully and determine if I am not right in saying that the whole, long, tedious inquiry and hearing upon the subject of the Act of 1860 was substantially to settle the question whether the dam at Billerica was raised in 1798, and again in 1828, and whether as the necessary result of such raising the meadows in Wayland and Sudbury were so flooded as to be entirely ruined; reduced



from being some of the most valuable lands in the State to a condition of utter worthlessness. Such was the allegation upon one side, and that allegation was denied upon the other. And it was upon finding that proposition one way, and because, gentlemen, the committee of the legislature of 1860 made an entire mistake in their finding, a mistake perhaps to be expected, they never having given the parties interested a chance to be heard, and really having had no time to carefully examine the matter,—it was from this mistaken finding, as they say in their report, because the dam had almost destroyed ten thousand acres of most valuable lands without any compensation, that they recommend the Act of 1860. It was for the same reason, it is fair to presume, that the legislature passed that Act and imposed the burden upon the public treasury of affording a remedy for the evils occasioned by the Act of 1793.

#### CLAIMS AND COMPLAINTS GROUNDLESS.

Now, gentlemen, is it not true that when you have gone so far in this inquiry, you have really accomplished the most that you are called upon to do? For now, so it is, after the experiments of the commissioners and their report, it is demonstrated to be true beyond all question and doubt, as certain as a mathematical truth, and you are so to consider it, as you have decided, that none of the meadows above the dam are substantially injured by its flowage, and that it does not, as it is now maintained at its highest point, set back any water upon the meadows in Sudbury and Wayland. Now you have it as a proved fact that all this complaint of ruin in those two towns from the Billerica dam, whether it was raised in 1798 and again in 1828 or not, is entirely groundless, and never had any foundation except in the imaginations of those complaining, that water instead of being raised two feet in those towns by the dam, was not affected by it a single inch.

Why, gentlemen, you now have it demonstrated that these claims and allegations, upon a belief in which the legislature passed the Act of 1860, are entirely without foundation in fact, groundless beyond all peradventure. The Act then was passed because of the mistake, a mistake of great magnitude no doubt, and involving large interests, but still a mistake, and one which has already entailed upon the Commonwealth an expense of

some twenty thousand dollars, and which, if persisted in, will entail upon them an expenditure the limit of which it is impossible now to foresee and calculate. Because, gentlemen, if this course is persisted in and the Act retained, after the report of the commissioners, as I shall have occasion to say to you hereafter, it is but the beginning of the end, it is but the initiation of a policy which will be invoked every year and by all parts of the State. Sudbury River and Concord River are not the only rivers in the State of Massachusetts. If you begin here to improve and pay for improvements out of the treasury of the Commonwealth, others will come in for their share of expenditure, and that, too, with equal right and equal justice. Why, gentlemen, it turns out now,—and I only call your attention to it in this connection to show the series of mistakes, not to say blunders, on which this Act was passed,—with all these magnificent claims made, that ten or twelve thousand acres of the most valuable land in the eastern part of Massachusetts, worth one or two millions of dollars, had been utterly ruined,—it turns out now, gentlemen, by actual measurement, that this magnificent claim has been reduced two-thirds, that instead of ten or twelve thousand acres there are but about four thousand acres of meadows all told, including all those in Billerica about which no complaint is made. And that this measurement is most liberal you will see by a moment's glance at the large map of their lands, where you will find by the elevations of their surface, marked in small figures, large tracts are included more than a mile from the river, and from two and a half to five feet above the top of our dam, and other large tracts still higher, where it was not considered necessary to mark their elevation. And further, from actual experiment it is now demonstrated, that instead of the dam flooding back the water in Sudbury and Wayland at least two feet, as was claimed by the most moderate and least inflamed testimony, at the highest point it ever reached, it never set an inch of water upon the meadows in those towns, and that it will only raise the water a half a mile above it, a fraction short of eight inches. That is, gentlemen, if you take the dam entirely away, not cut it down two or three feet, and let the water run, as nature made it to flow, without let or hindrance from any artificial obstruction, you can only lower the water, half a mile above, not two

feet, but less than eight inches. Still the good people of Wayland and Sudbury claimed—believed, I suppose,—that the dam raised the water at least two feet five-and-twenty miles above. Now I pray you, gentlemen, look at the result, the proved demonstrated result, and compare it with the claim.

The claim was this, that three-quarters of this ten thousand acres of land was situate in the towns of Sudbury and Wayland, the most valuable land in all that section of the State, and that the water had been raised five-and-twenty miles above the dam to the depth of two feet, at its ordinary summer stage. Eight inches was considered hardly of consequence, but the claim was two good feet, at the most moderate calculation. It turns out, gentlemen, not only that this two feet never had any existence except in imagination, but that the dam, take it all away, would not affect the water half a mile above it quite eight inches, according to the report of the Commissioners; and that all the eight inches disappear substantially before you get up into that region, sir, from which comes the largest, and longest, and loudest cry,—because, as my friend upon the other side says, there the dam did its greatest and wickedest work; a work so hurtful, so destructive, that the sufferers were constrained to cry out and complain till they made themselves heard, and obtained redress for their sore distress.

#### PERSISTENCY OF THE COMPLAINTS.

The complaints of the people of Sudbury and Wayland have been long, loud, constant, and persistent in reference to their meadows. They began in 1636, were continued in 1644 and 1672, and down to 1711, during all which time they were as loud in arraighing nature for her unkindness, as they were afterwards in inveighing against the injustice of the mill-owners. Soon after 1711 they began to persecute Christopher Osgood, who built the first dam under the Billerica grant, and continued the persecution until they obtained, it would seem, an adjudication that the dam was a nuisance, although it is now certain it could not have injured their lands a particle. We find them again in 1742 and 1789 complaining most bitterly of nature; and then changing, after 1798, and charging the same troubles upon the raising of the dam by the Middlesex Canal. Then came a succession of trials with the Canal Corporation, when they

complain again not only of the dam, but also of the ignorance and injustice of the juries of their neighbors, who were too wise to be misled by them, and rendered verdicts against the land owners, and in favor of the Canal Corporation. Then again, in 1816, we find them complaining of nature for the fifth or sixth time, and asking for legislative aid to enable them to combine and remedy the evils of their natural position. After 1828, when a new dam was built at Billerica, the charges against the mill-owners are renewed, and kept up, down to this time. And you find my friend, who opened on the other side, telling you the legislature must now redress the wrongs and injustice suffered by these patient land owners, during the last two centuries; forgetting, in his zeal and ardor, that he was charging nature herself as well as the mill-owners with the doing of these wrongs,—for during more than a quarter part of that time there was no obstruction to the flow of the water in the Concord placed there by the hand of man. My friend was misled by his ardor and imagination, or he would hardly have called upon you to redress such wrongs. But after all I am wrong and he is right, on a more careful examination of the whole of his claim. Give it that examination, and you will see, however it may be disguised, you are now in fact, in truth, asked to furnish aid from the public treasury to remedy the natural defects of these lands, for now it is established that our dam does them no manner of injury. This is really the claim, and what it must result in, however much it may be attempted to distract your attention from the true issue.

#### THE REAL CLAIM.

I know my friend, who opened on the other side, tried to disguise this as much as possible, and lead you off in other directions, so as to cover up, as much as he was able to do, the only true ground upon which his case could be put. But however able and artful my friend may be, he cannot turn you away from the true reason, the real grounds of his claim, not although he should give us double the number of fragments from his fourth of July orations, or Lyceum lectures, not although he should amaze us by an increase of queer and incongruous illustrations, and rhetorical ornamentations. I do not mean to detract one whit from the credit due to my friend,

however, for I thought he did what man could do to conceal his real purpose, and evinced more than his usual fertility of resource in confusing a subject. Indeed, as I sat listening to him and heard him pass from Hood and his story of the burnt shirt, to Cotton Mather and his short way with unbelievers—from Sir Harry Vane, governing by the law of God, to Napoleon, acknowledging no rule but his own will—from Julius Cæsar to the Pope of Rome—the Pontine Marshes to the Valley of the Nile—from De Quincey to Dr. Fairweather and Elsie Venner, I felt very much as one does in a dream, where there will be a constant succession of the queerest and most disconnected and unlike persons and events trooping through the mind.

But attempt to disguise it as he may, he really asks you now to come to the aid of the land-owners, and take our property for the reason just given, paying for it out of the public purse, not because they have been injured by us under any Act of the legislature for which compensation has not been paid, but to enable them to improve upon and remedy the natural infelicities and disadvantages of their position. Have we set back an inch of water on these lands in Wayland and Sudbury, where the complaint mainly comes from? By no means; that is all settled for us by the uncontroverted evidence deduced from the experiments. This then is the real statement of the claim: you must deprive the Talbots of their property, and the town of Billerica of their chief source of prosperity and prospective increase, of their right to avail themselves of the natural advantages of the falls on the river within their bounds, usually a more valuable property and greater source of prosperity than the meadows on the banks, to enable these gentlemen owning lands in Wayland and Sudbury to improve upon the natural condition of their property, to enable them, as my friend says, to remedy and redress the wrongs inflicted on them by nature.

I don't believe, gentlemen, you are called upon to do any thing more than undertake to do justice for and rectify the wrongs which your predecessors have done.

#### HOW THE ACT OF 1860 WAS PASSED.

Now, gentlemen, I want your attention for a moment to the way in which this Act was passed; because I am aware—I hope

I give as much weight to it as my friends upon the other side can—I am aware of the weight that should be given to this proposition, that an Act of the legislature is not to be repealed lightly, before it is tried, and found to be wrong by experience. I agree, sir, that there are many cases where I would not vote for the passage of a law, and still would not, after it had been enacted, vote for its repeal until it had been tried. I know, and am ready to admit, that there is great force and weight in the argument, that after a law has been enacted, has been put on the statute book, different considerations undoubtedly prevail, in reference to the repeal of it, than ought to prevail in reference to its passage. And I am prepared to meet that argument, and therefore desire your attention to the history of the way in which this law was passed.

Why, sir, it is true that this Act was unexpected to, and unasked for by, every-body. It was never asked for by the petitioners upon whose petition the original committee of 1859 was raised. My friend has told you that some misstatements were made in a publication put forth through the Commonwealth by my clients. But he is mistaken. That publication was substantially correct. I beg again you will examine the petition of the four or five towns, upon which the original committee of 1859 was raised, and all the other petitions in aid of it, and you will find, with the single exception of that of Henry Vose and others in aid, there is not a lisp in them, from beginning to end, in reference to the Commonwealth assuming the power to cut down the dam at Billerica Mills. On the contrary,—I wish your attention to the fact,—that all they ask—and they say so most emphatically—is that the Commonwealth may simply restore to them the right to seek in a court of justice a remedy for the wrongs they have suffered at our hands, by means of this dam. They ask for nothing else substantially. The burden of their song and complaint is this:—"You have limited us to one year to prosecute for our damages, and so it is that so short a time was really depriving us of all remedy—really amounting to a denial of justice." All they say in their petition is, "Just repeal that limitation Act, and give us the natural right of pursuing a remedy for wrongs; restore to us the right to sue the owners of this dam for the injury we have suffered at their hands." Well, gentle-

men, I should be entirely content that the owners of all the meadow-lands in Sudbury and Wayland might sue us for any damage we have done, which is substantially all they ask for, because, it turns out now, from the experiments, the results of which we have before us, that we never set back upon their lands an inch of water. They ask for rather a barren right, I apprehend it would turn out,—the power to pursue a remedy for a wrong which was never suffered. That is all they ask for, except the repeal of the Act creating the Canal Corporation, which has been accomplished. They do not ask for a cutting down of the dam.

Again, gentlemen, the Committee who reported upon this matter in 1859, if you will examine their report most carefully, do not recommend to the legislature, except in the very last resort,—they recommend first various other different things,—they do not recommend this cutting down the dam, except as a last resort. More, gentlemen, the secretary of that committee, who spent thirty days, more or less, in a patient hearing and investigation of the whole matter, Mr. Wrightington, of Fall River, a most intelligent, able and careful man, was a member of the House in 1860, when the report of that year was made, and this law was passed; and he not only voted against it, but spoke against it, and did all he could to prevent its passage. Nay, more, gentlemen, last year he was a member of the House, and he again was in favor of suspending the operation of that Act, saying that he did not believe in its wisdom or justice.

#### ORDINARY OBJECTIONS TO REPEAL NOT APPLICABLE TO THIS ACT.

I now wish to show you, gentlemen, the reason why the ordinary objections to the repeal of a law do not apply in this case. The Act of 1860 was reported at an evening session, on the 29th of March—Friday, I think; it was printed and distributed the next day, and did not get into the hands of the members to any extent until Monday. On the same 29th day of March, gentlemen, and not before, the report of the committee of 1859, containing some 500 pages of evidence, the only evidence upon which the legislature were to pass the Act of 1860, was printed and distributed among the members of the House and Senate, and unless they did what nobody had a right to call

upon them to do, I don't believe there were ten of them, outside of the committee, who read, even hastily, the evidence, before they were finally called upon to vote upon a law which depended upon it. Indeed, gentlemen, under the pressure of the few last days of the session, no one could read even a portion of this evidence, and attend to his other duties. How could any fair examination and consideration of the question be had,—the report of the evidence printed on the 29th of March, the Act printed on the 30th for the use of the members, and the legislature adjourning on the 4th of April? Don't you know, all of you, gentlemen, that the Act must have been passed upon by the legislature without any member having had the opportunity for that examination which should have been given to so important and so novel an Act?

More than that, gentlemen. So it was—why, I don't know—my clients never had an opportunity to be heard before the committee, either personally or by counsel. We know that two of the chief originators and supporters of this measure, the two main pillars of this whole edifice, who have been engaged upon it from beginning to the end,—most respectable men, undoubtedly,—who have their prejudices in reference to it—with whom the belief in the wrongs done by the Billerica dam has become chronic, and beyond the power of being shaken, and whom you could not convince that they were mistaken, in my judgment, gentlemen, if an angel came down from heaven to testify to them of their mistake,—we know two of those men were members of the legislature of that year; I rather think they had some business to attend to both before and with the committee and other members of the legislature in reference to this subject. This may help in explaining why so extraordinary an Act was passed with so little opportunity for examination and consideration. I refer to the members for that year from Concord and from Wayland. I know this certainly, whether others were heard or not, so it was, gentlemen, that these petitioners now here, remonstrants then, could not get the chance to be heard before that committee, who were to pass and did pass upon their rights. I know I besought an old friend of mine, a member of that committee, for a chance to be heard only, and I thought I had assurances that my request should be granted. I asked it as a right, as a favor, on every ground, as counsel for the



most respectable town of Billerica, whose interests were at stake ; I asked it for my clients, and on stronger grounds still, for my friends, gentlemen, for in this case, I am happy to say, I appear here not for clients merely, but for close and dear friends of many years standing,—to have the chance to appear before that committee before the rights of those I represented were finally passed on. I urged upon this member of the committee, who I supposed could appreciate the argument, that no one should be condemned without a hearing. “Why, Sir,” said I, “you would not undertake to punish, to even act upon the rights of the worst criminal that ever lived, without giving him a chance to be heard in his own defence before he was condemned.” But so it was, gentlemen, that we could not be vouchsafed a hearing. I suppose they thought there was no time for it ; if a hearing was had, it would have been impossible to have forced through the bill. I agree with them in the latter opinion. If we had been granted a hearing, a chance to urge our claims, my belief is, the report would never have been made, or if made, its recommendation would never have been adopted.

The committee say they read the proof-sheets of this report as it was coming out, and the moment it came out they reported the bill to the legislature, coming to a conclusion in their haste upon the facts and evidence entirely unwarranted, a conclusion now proved by the experiments to be all wrong, and utterly without foundation.\* The mistake, the blunder was made because they were in haste, and would not hear both the parties to be affected by their action. And more than all this, gentlemen, I have the right to say here, because it was said by one of the committee, a member of the Senate from Suffolk County, who denounced the bill as being utterly unjustifiable and uncalled for, and one which he, as a member of the committee, knew nothing of—that all the members were never notified of any meeting of the committee when it was agreed upon. That member of the committee from Suffolk County is now a member of the Governor’s Council.

So hurriedly and under such circumstances this most important bill, most novel in character, was passed, gentlemen. Have we not a right to complain of hasty legislation ? They talk about hasty and improvident legislation in 1793. Haven’t we a right to complain of hasty and improvident legislation

in 1860? "Hasty and improvident," gentlemen? So hasty and improvident that the rights of a most respectable town, and the rights of my clients—involving their right to the enjoyment of all the property, really, they have accumulated—were passed upon, were taken from them, without the possible chance of saying a word in their own behalf. I take it, gentlemen, there are two sides to this question of "hasty and improvident legislation." What said the legislature of 1861? Why, gentlemen, after a hearing of some twenty days, more or less, before that committee—the chairman of which, on the part of the House, now fills the Speaker's chair—they came to the conclusion unanimously that the law of 1860 was hastily and improvidently passed, and ought not to have been enacted at that point of time without further and more careful inquiries into the reasons urged in its favor. They came to the conclusion, farther, gentlemen, really that the only question before the legislature of last year—a decision upon which would establish the right or the wrong of that act—was this: Does the dam at Billerica flood the meadows in Sudbury and Wayland, and in Concord? Does it drown them out, destroy them, render them worthless? Does it set back and keep upon them the water two feet higher than formerly at the ordinary summer stage of the river? Therefore they said, "The Act of 1860 shall not go into operation until these questions have been answered, and the matter made certain and beyond doubt by actual experiments, until it has been made certain beyond all question whether the water, which it is claimed has been set back upon these meadows some two feet at the lowest computation, has been set back upon them at all." Such was the opinion of the legislature of last winter. Why, they have really said that this Act of 1860 was hasty, ill-considered, improvident, and not fit and proper to have been passed. They by their action have opened the door through which you are to pass, and through which we now ask you to pass. There is nothing, then, gentlemen, nothing—when you come to examine the facts and circumstances surrounding the passage of the Act of 1860—in the claim that you are asked here, without cause, to repeal a law which has been passed with deliberation and with care. The trouble is that the enactment of this Act lacks the important

elements of due consideration and deliberation, of proper examination of the grounds and evidence upon which it was asked for.

#### EXAGGERATION OF THE QUANTITY OF LAND INJURED.

There is one other matter, gentlemen, to which I want your attention here, as we pass along. It is to the monstrous exaggeration of all the facts and claims upon which the land-owners put their case, only showing how far prejudice, how far interest, how far schooling one's self to look upon one side of a question alone, to the exclusion of the other, will lead away honest and ordinarily fair-minded men. The monstrous exaggeration upon this subject, both as to the quantity and quality of the lands which they claim have been injured, and the extent of the injury, is now settled, proved beyond any further controversy.

They claim, gentlemen, that we have injured, substantially destroyed, their meadows in Sudbury and Wayland,—and they say the limits of those towns embrace more than three-quarters of all the lands affected,—that we have turned a most beautiful and smiling mead, the main source of wealth to the inhabitants of those towns, into a barren wilderness and an unwholesome bog,—that we have raised the water two feet, and flooded out thousands of acres; and it turns out by actual proof, we have not in any way affected the lands in those towns, or put upon them an inch of water, and that whatever changes may have taken place, they cannot be ascribed to us with the slightest shadow of truth.

But, gentlemen, as I said just now, the whole matter, the whole claim, is a monstrous exaggeration. The claim made here, on the start, assumed huge and magnificent proportions, and was ever after exaggerated and magnified, until even my friend here who closed yesterday, seems to have convinced himself that it is one of the greatest subjects that ever came before any legislature. And you see how the legislature were misled, throughout, by the reports in 1859 and 1860, which I have quoted. The petition claims there were ten or twelve thousand acres of land ruined; the committee of 1859 report, “from eight to ten thousand acres;” and that of 1860, “about ten thousand acres of the best land ruined.” How ruined, I desire to know? They say,—petitions, reports and all,—not by natural causes, not by other artificial obstructions we have had no

control over, but ruined by our action, ruined because we had built and raised the dam at Billerica under an Act of the legislature.

Now, as to the number of acres, gentlemen, how large is it? My attention was called to it first by a member of the legislature of last year, and, I am happy to say, of this year also, who had some knowledge of the matter, who was born upon the banks of the Concord River, and had often—as I have done—fished up and down the banks of these rivers day after day; he came to me and told me there was nothing like ten thousand acres, reckoning every thing—not half of it. And then, gentlemen, for the first time,—I agree that I had been misled by the bold and confident assertion of respectable men, on the other side,—I was led to examine carefully the evidence on that subject. I am ashamed of it—I had taken it for granted, all of us had, that what they claimed so boldly and confidently was true substantially; but when for the first time I was led to examine, gentlemen, I found, from their own sworn testimony, from their own largest estimated statements, that they could not get, all told, in the towns that had claimed damages—not, sir, of meadows alone, but of meadows and lands they claimed had been affected by the flowage—quite five thousand acres. And then I said, and I say it now, and am willing to be held to it now, though not to open my lips for my clients is about the last thing I would agree to in this case, “If you will go and measure the number of acres in those meadows, I will abandon this case if you find over five and thirty hundred acres that any competent engineer will say are affected by the flowing of our dam.” And with the same proviso, gentlemen, I will say, now, if you find over a thousand acres so affected, I will abandon the case. Why, gentlemen, there are found to be about four thousand acres, all told, taking Sudbury, Wayland, Lincoln, Concord, Bedford, Carlisle, and Billerica, embracing every thing. And to see what they have to put in to make even *about four thousand acres*, as the Commissioners report, I ask your most careful attention to that great map, gentlemen, that has been paraded here, where all facts that are supposed to tell for the land-owners are on a large scale, and all telling for us are either left out or put down so minutely as not to attract attention. I understand that the green lines upon it represent the meadow lands, *making*

up “*the about four thousand acres;*” you will find that the meadows there represented extend more than a mile and a half from the river, and that the great proportion of the surface of those meadows is two, three, and four, and even five feet above the top of our dam, and large quantities of them so high above it that they don’t dare to put down the elevation of surface above the dam which is claimed to destroy them. I want your attention to this fact carefully;—it is easy to say generally “*about four thousand acres,*” but examine the map and the elevations marked, and those so high it won’t do to mark them, and the conclusion will force itself upon you, that of meadows that could be within the limits of any flowage from the river, in its ordinary stage, there are not only not *about four thousand acres*, but in all human probability, not over two thousand acres.

And again, gentlemen, my friend here—I must invoke him again, for occasionally he makes an admission which is useful—has said the main trouble, more than three-quarters of all the trouble, is in the towns of Wayland and Sudbury, because there is situate more than three-quarters of the injured meadows. I take him precisely at his word—I thank him for the admission of the three-quarters. There were three thousand acres, then, of the *about four thousand acres* of meadows in the towns of Sudbury and Wayland. But the Commissioners say, and you will find it and believe it—and nobody can doubt it at this day of our Lord,—that our dam does not injure the lands in those towns in the slightest appreciable degree. Then there are three thousand of the *about four thousand* gone at once, and there are but a thousand left, to distribute between the five towns of Lincoln, Concord, Billerica, Carlisle, and Bedford. Cannot I stand, think ye, by my declaration of last year, that I will abandon this case if any competent engineer will find more than five and thirty hundred acres of land affected by the flowage of our dam? Why, these Commissioners say, themselves, in effect, that there is less than a thousand acres; and you will find, in some places in the neighborhood of the dam, that they have included in their estimate within the green lines, land they themselves say is some three or four feet above the top of our dam, and some of it still higher that they do not give us the elevation of.

## BILLERICA AND BEDFORD NOT INJURED.

Well, gentlemen, so far as the town of Billerica is concerned, and the several hundred acres in that town and Bedford, which her citizens own, I beg of you to have no anxiety on her and their account to devise a remedy for any injustice they have suffered from our dam. Because, so it happens,—and this is a peculiar case,—that with this river, immediately above the dam, running for some four or five miles through the town of Billerica, with meadows on each side of it, and where the water is highest flowed back by the dam, the land-owners do not know they have been flowed or injured, and do not desire you to interfere in their behalf; on the contrary, they most earnestly deprecate all action on your part. Some fourteen or fifteen witnesses from that town, and some from Carlisle, testified that there had been no raising of water on their lands, within the memory of man, by our dam. And in addition to that testimony, they come here this year and ask you, every man of them owning meadows in Billerica, and some of the owners of meadows in the town of Bedford, not to interfere on their account, for they are suffering no trouble. Their neighbors five-and-twenty miles above the dam may be suffering from it, but these men, owning lands for the five miles next above it, suffer no manner of evil—at any rate, if they have suffered, they never have known it.

Then, I say again, gentlemen, you have but a thousand acres for Lincoln and Concord and Bedford and Carlisle and Billerica; Carlisle is on one side of the river, Bedford on the other Billerica on both sides. Deduct Billerica from the thousand acres, and I desire to know how much you will have left affected by the flowage of our dam. Four thousand acres of the best land in the Commonwealth affected by the flowing of our dam, when, pull the whole dam away to the foundation, and you cannot affect the water half a mile above it quite eight inches! And they come here, deliberately, and tell you, and have told other legislatures, and got them to act upon it hastily, improvidently, wrongfully, that ten thousand acres of land has been flooded, by raising the water two feet, five-and-twenty miles above that dam!

## VALUE OF THE LAND GREATLY EXAGGERATED.

The value of the land, gentlemen, I want to call your attention to for a moment. Why, read this original petition. And perhaps, gentlemen, that will be quite enough. There is something amusing about this matter—amusing it would be if it were not so wicked, so destructive, so ruinous to the parties I represent here. Read that first petition I have called your attention to. “Ten or twelve thousand acres,” they say; and when you come to take the evidence, on their own showing, there were but about five thousand and sixty, all told; taking their own sworn *estimates*, not *measurements*, mark you; “and that meadow-land,” the petition goes on to say, “was worth a million dollars at least.” \$100 an acre, taking it all the way from Billerica up, would be \$400,000; \$200 an acre, is \$800,000; at \$250 an acre, it would be worth \$1,000,000. They come here and tell you, and really ask you to base your action upon it, that that meadow-land was worth \$250 an acre, at least, more than sixty years ago. Gentlemen, you will not believe it, nor will any body else that has lived in the country and owned land there, as I have a good deal of my life. Pretty good land, indeed first-rate land, and tillage land to, that five-and-twenty miles back, will now bring—isn’t it so?—\$100 an acre. Pretty good land, first-rate tillage land, will hardly bring that sum; they don’t sell meadow-land for any such mark, twenty to thirty miles back from the coast, and never did do so.

## BENEFICIAL RESULTS OF THE FLOWAGE ACT.

And now, gentlemen, I want your attention for a moment to another subject, which I had almost forgot in my haste. The matter is not important, but I can’t but allude to it as my friend on the other side has favored us with his opinion on it. He tells us that the Flowage Act is of doubtful expediency, as well as constitutionality, and that it cannot be heresy now to say so, because the idea has been sanctioned by the chief executive of the Commonwealth. I am not going to permit myself to be led away into a long discussion of that matter. In my judgment, the objection to that Act arises mainly from giving undue weight to mere abstractions, and from a want of experience and knowledge of the practical workings of the law.

Our Flowage Act has always substantially been the law of Massachusetts. In our neighboring State of New Hampshire, with capacities for manufacturing such as are nowhere else, certainly in the United States they have never had any Flowage Act, and any man who owned a piece of land worth sixpence could put his bar upon any improvement that was being made. I am willing, gentlemen, coming from Massachusetts, and all my ancestors before me being Massachusetts men, I am willing to look to-day at Massachusetts, with her mills and her manufactures, and her agricultural prosperity also, and compare her with New Hampshire,—a most respectable State, I agree, gentlemen, but one which will in no way compare favorably with our own Commonwealth, either in wealth, manufacturing, or agricultural prosperity. Indeed, sir, I was reminded of the remark made by a distinguished man in reference to New Hampshire, the truth of which both my friends on the other side have illustrated by their own acts and adoption of it—“a capital State to emigrate from, sir.” I am only happy that the truth of this remark has given us both my friends on the other side, and many other of our best men. I am willing to take New Hampshire with no Mill Act, and Massachusetts with one, and compare their agricultural or general prosperity. In my judgment, no law has contributed more to the general, or even the agricultural prosperity and wealth of Massachusetts, than the Mill Act; and you will find no complaint of it, as a general thing, among the real genuine farmers, who get their living by farming, instead of playing at it; and let me tell you there is no worse enemy to the real true interests of the farmer in Massachusetts, than he who in pursuit of a mere abstraction, creates distrust in those engaged in manufactures, or does not seek for the largest possible investment of capital in that business. Not a dollar can be invested in manufacturing in Massachusetts without positive benefit to agriculture; and just in proportion as manufactures flourish and increase here, in the same proportion will agriculture flourish and prosper.

#### VALUE OF THE LANDS.

But now to return to the exaggerated estimate of the value of the lands in question. The petition estimates them, as you have seen, at the enormous value of from one to two millions,



and my friend who closed on the other side, in utter despair of finding evidence to sustain the petition, has given us his opinion as to how much would be and was their natural yearly product. And he makes it, as I recollect, that each acre would yield a net profit equal to six per cent. on \$250—a remarkable coincidence between my friend and the petitioners. But the trouble is that such is not the way to prove the value of lands. Nobody, you know very well, would act on such proof—invest his money on it. It is easy enough to estimate, but hard enough to get the estimated number of hard dollars off the land. Such at any rate is the experience of most men. I have much faith in my friend's legal opinion, but permit me to say I should prefer to take the opinion of some good working farmer upon a question of agriculture—of one who obtained his living from his own work, on his own land. Those of you whose attention has ever been directed to the subject, and listened to trials in court where the value of land has been in controversy, have been surprised, no doubt, at the fact that you can generally prove by opinions and estimates from fair witnesses enough, that the value of any land ought to be and is very much greater than any price it will sell for. Indeed, so universally true is this, that for the last twenty years, having had a somewhat wide experience in trying cases where lands had been flowed by dams, I have yet to hear of a single instance where the land-owner complained that he did not receive the most liberal compensation for all the injuries suffered. So that, so far from farmers generally considering the flowage of their meadows by a mill-owner a disadvantage, it is now generally got to be considered that there is no way in which the owner can realize so much money out of meadows, as by having them flowed by a responsible mill-owner.

And in this connection, gentlemen, let me have your attention for a moment to another estimate, made by some distinguished agriculturists, whose prejudices are enlisted in this matter, showing there is nothing too extravagant to be proved, to raise the value of these lands. In the report of the evidence by the committee of 1859, you will find that Mr. Wood and Lieutenant-Governor Brown say that the mud on this land is worth, at the least calculation, two dollars a cord. I only allude to this to show how easy it is to exaggerate every thing. It comes from

the testimony of two of the most eminent gentlemen engaged in farming in Massachusetts. They say that the mud on this land is worth two dollars a cord at the least calculation. Well, I had the curiosity to see how much these meadows were worth, because it struck me they were getting to be mines of untold wealth. They testified that half of these meadows were covered three and one-half to seven feet deep with this valuable material, worth two dollars a cord. There are some 43,560 square feet in an acre, and taking five feet as about the medium depth, you will find, sir, that there are about 1,700 cords to an acre of this material that is worth two dollars a cord at the least possible calculation, carrying up the present value of that land, not to \$250 an acre, but to about \$3,500.

I am sorry my friend stopped short with two hundred and fifty dollars an acre, when he could have proved just as easily and just as satisfactorily, by sworn testimony, that thirty-five hundred dollars was the proper figure to put it at. I only say again, I allude to this to show how utterly misleading, gentlemen, all such estimates are, and how unsafe as a ground for action.

Again, gentlemen, in reference to the value of this land as testified, I have no doubt you have before you in the report of the evidence every piece of land that has ever been sold as high as seventy-five dollars or one hundred dollars an acre; and you will find but few, very few, instances of that kind. But when you come to a matter of opinion, every thing is changed. Men look back and say, and undoubtedly make themselves believe, "This land was worth about one hundred dollars an acre in years gone by." Now, gentlemen, I cannot controvert that mere opinion, and will tell you why: I cannot go back to the old assessors' list and undertake to pick out the assessed value of the meadow-lands, because, in olden times, all lands were assessed together, the farm was assessed at so much, including all kinds of land. I tried that, and found it utterly impossible to arrive at any valuable result. I could not find out by the sale of it, because meadow-land and other land were generally sold together; so that there was no way of getting at, satisfactorily, the true market value of the meadow-land separately.

We have the testimony of Lieutenant-Governor Brown, of Concord, and Mr. Wood, who testified to the mud being worth

two dollars, that the selling price of the best tillage land, in Concord, in 1859, was one hundred dollars an acre. They wanted to have you put this at some two hundred and fifty dollars or three hundred dollars an acre, three times as much as the selling price of the best tillage land in Concord, where they raise men more fit for cabinet officers, as my friend says, than in any other part of the world—they think so, undoubtedly; and I think it may be said in passing, that it is quite apparent the good people of that town need have no fears of losing any thing by not stating their claims high enough.

Now, sir, I say, upon this proposition, I can show you, by positive testimony, contemporaneous testimony, that this land was not of the value they put it at, in times gone by. In the first place, gentlemen, when we are told of one hundred dollars or two hundred and fifty dollars an acre being its fair value, I want to see how much their best lands are worth by their own estimation. I happen to have the printed report of the assessors of the town of Wayland, for the last year, 1861, and while I give you the result of their appraisal, I beg of you to recollect that now our assessors are under oath to appraise every piece of land at its *true cash valuation*. And, gentlemen, all the tillage land in the town of Wayland averages but about forty-five dollars an acre; there are but about six or seven acres, I think, in small lots of an acre or two each, that come up to a valuation of a hundred dollars an acre. But they want you to believe that this meadow-land was worth two hundred and fifty dollars an acre sixty years ago, which is five or six times more than the value of their tillage land at this time.

Again, I say, gentlemen, the land was not worth so much in years gone by as they say it was, and I will tell you why. I was amused, in looking at the first petition in 1859, in connection with the report of the Commissioners of this year, to find the petitioners saying—you will find it upon page 15 of the memorial, in the report of 1859: “The yield was from one to two tons to the acre, all good stock hay;”—and now mark—*“and much of it, known in this district by the term ‘pipes,’ was so nutritious and attractive, that creatures would suspend their chewing, even of the finest English hay, upon hearing the peculiar rustle of ‘pipes’ upon the scaffold, and wait to be served with it.”* And the complaint most plaintively urged is

that we have destroyed the “pipes”—that their pleasant rustle is no longer heard in their barns and on their scaffolds—and that their cattle are deprived of their accustomed and dearly loved feast upon the “pipes.” That is a great ground of complaint most eloquently urged, gentlemen. Your aid is invoked to save the “pipes;” to have that gentle “rustle” heard again upon the scaffold, so that the cows may again stop their chewing, “even of the best English hay!” “Pipes” is the burden of their song; to the music of the “pipes” they tell the sorrowful tale of their wrongs. I want to call your attention to and deal with some facts about these same “pipes,” which cattle love above all other things, and the condition of the land on which they grow. These good people of Sudbury and Wayland tell you that the meadows, up to 1828, were good, solid, firm earth; that any body could drive a team of horses or oxen over them clear to the very verge of the stream; there was no soaking with water, no shaking bogs, no soft quagmire, but all was solid and firm, and that getting the hay upon them was like the vintage in the South of Europe, or perhaps the hop harvest in Kent.

Now, sir, we have some information in this report which we did not ask for, though I am glad it was given us. You find that the Commissioners have reported, and their report is final, and my friends on the other side are satisfied with it, the character and condition of the lands fit for growing “pipes.” The petitioners say, in their memorial, “Much of this produce was ‘pipes;’” their complaint is that the “pipes” have been ruined. Now the Commissioners say—what, do you think? that the “pipes” land could be teamed over, as I have already said, without the slightest difficulty, without wetting the hoofs of the oxen? By no means; quite another and different story. On page 28 of the report, the Commissioners say: “Where the surface of the water, in the ordinary summer condition of the river, stands *one-tenth to three-tenths of a foot above the general surface of the meadows, pipes grow luxuriantly.*” And they go on to say, that just as the water recedes below the surface of the meadows, pipes disappear in the same proportion.

You see how these gentlemen have been most industriously engaged in deceiving themselves—willing to be deceived, undoubtedly. They come here in one breath and say to you,

“ Why, gentlemen, these meadows were all as hard and level as a house floor formerly, in their ordinary summer condition ; any thing could be teamed over them, and *much* of their produce was pipes, which cattle love above and beyond all things ” —and that is the ground of their complaint. Yet you find that these pipes will not grow until the meadows are flooded from an inch and a third to three and two-thirds inches deep in their ordinary summer condition. Don't you see how absurd this is, how laughable it would be, were it not for the wicked and disastrous consequences that would result from acting on the claim ? They say they must have the water taken off two feet from these meadows because, in the olden time, this peculiar vegetable, “ pipes,” grew there ; and you find that the “ pipes ” would not grow unless the water, in the ordinary summer condition, stood above these meadows from one to three inches. That was the condition that would grow “ pipes ” — the only condition. According to that, gentlemen, it would seem that the trouble is that the water on the meadows has been lowered, not raised.

#### THE MEADOWS ALWAYS WET.

But, gentlemen, in truth and fact, this additional wetness of the meadows has been exaggerated as the value of the meadows has been exaggerated, because, so far from the fertility of these meadows having been the cause of persons settling in their neighborhood, you will find, if you refer to the history of Concord, that a large portion of the people of that town, directly after they settled upon these lands, moved away because of the wetness of these very meadows. Instead of going there on account of the meadows, when they got there, they found the meadows so covered with water—so history tells us—that they were obliged to remove. My friend here, on this point, again branches off into a disquisition about the meaning of the word “ meadows.” He says that it meant ploughed land—where they raised Indian corn ; and that our forefathers went up there and settled, because of the peculiar fitness of the meadows for raising Indian corn. If, instead of bringing in Webster's Dictionary upon another point, my friend had turned to old Sam Johnson to ascertain what meaning was attached to the word meadow in England, he claiming that our fathers used it

in that sense, he would have found that in England it meant lands which annually produced grass, and watery, though not covered with water. Meadows in this country—unless you apply the term to the interval lands upon the Connecticut—mean wet, damp lands, that yearly produce grass. My friend says our ancestors went up there to raise Indian corn. Wouldn't you liked to have seen the old fathers, the Concord and Sudbury people, planting Indian corn on those meadows? The allegation is that most of these lands, in early times, produced "pipes," which the cattle loved more than any thing else; and we have seen that "pipes" will not grow unless water covers the land to the depth of from one and a third to three and two-thirds inches, in the ordinary summer condition of the river. Yet my friend says the settlers went up there to plant Indian corn! Why, sir, it was a matter of complaint, as you will find by referring to the extracts from the public records in the book which you have before you,—it was a matter of complaint in 1636, in 1644, and in 1672, by the people of Concord and Sudbury, that their meadows were flowed; they were trying to find some means of getting the water from them. You find that in 1742 almost all the meadow owners of Sudbury and Wayland petitioned the governor and council for the appointment of a commission to remove the water from their meadows, representing that the water stood upon them frequently and long, so as to render them unprofitable, and destroy their hay and grass. Gentlemen, I beg your attention to this upon the question of value. In 1742, all joined in a petition to the governor and council to adopt some means to take the water off their meadows, which had been rendered unprofitable in consequence of the water standing so much and so long upon them. The owners of these meadows—worth, we are told, \$250 an acre!—all joined in a petition representing that the State must interfere, because those meadows had been rendered unprofitable—almost destroyed. This was in 1742, one hundred and twenty years ago. Do you think, gentlemen, the meadows were then worth \$250 an acre? Again, in 1789, before this Middlesex Canal was thought of, before the charter was passed, you find the same meadow-owners, all of them—or the owners of the same meadows whose owners had petitioned in 1742—joining in another petition to the governor

and council asking for aid, saying that their lands were flowed in summer time, that the water stood, in summer time, upon those lands, and had so stood as to render them of little value. It is true they do say, in that petition, "formerly of great value," now of little value. In 1816, you find the sons of the same men, judging from the names, joining in a petition to the legislature, saying that the water stood on those meadows in the months of June, July and August, and that their meadow lands, "heretofore valuable," were of little value.

#### THE QUESTION OF VALUE, AGAIN.

Gentlemen, I want you to deal with this matter as men of common sense. They claim, on the one side, that these lands were worth \$250 an acre at the commencement of the present century. What do you find? You find from 1636, running down to nearly 1700, that on three or four different occasions, these meadows were complained of as being so wet that they depopulated those towns—people would not settle there. You find, in 1742, the owners of those meadows saying that they were rendered of little or no value. I ask you, gentlemen, if you believe that, in 1742, lands that were worth \$250 an acre would be said by the owners to be of little or no value? You find that, in 1789, the owners of those same lands say that those lands, "heretofore valuable," were of little or no value. You find the same thing said in 1816. I pray to know, gentlemen, when those lands were so valuable as they tell us? When was it that these meadows were of such value? Am I not dealing fairly with them, gentlemen? I am taking the representations made to the governor and council by the owners of those lands as a basis for action by the Commonwealth. I am telling you what they said in 1742, in 1789, and in 1816; and they said, on those three occasions, that those meadows were of little or no value. The question is, at what time within the last century were those lands worth from \$150 to \$250 an acre. It is for you to say, gentlemen, looking through all the evidence, whether you do not know from the evidence,—their own evidence,—that those meadows never approached the value which they claimed that they possessed. In the petition from the town of Sudbury they only claimed that they were worth \$75 an acre, but they never approached even

that value. The truth is, that they have magnified the value as they have the quantity of these lands. They said there were ten or twelve thousand acres affected by the dam at Billerica; it turns out, when we get at the facts, that there are not a thousand acres so affected. They represented that at some time, going back beyond the memory of man, there was some tradition that these meadows were worth from \$150 to \$250 an acre. It turns out that from 1636 down to 1816, they made the same claim that they do now, that those lands were injured by water. They exaggerated the value in the same way that they exaggerated the quantity.

#### THE CLAIM THAT THE ACT OF 1860 IS IRREPEALABLE.

I want to call your attention now, Mr. Chairman and gentlemen, to another matter. I understood yesterday, and from the opening argument of my friend on the other side, that a claim was made that there were certain rights created by the passage of the Act of 1860, and by the action of the Commissioners appointed under it, which rendered it obligatory upon the legislature not to repeal this Act. Perhaps the answer to this would be:—If the legislature should pass an Act which it is not within your power to repeal, no possible harm can be done to any body, because, if you undertake to repeal it, if it is unconstitutional, if you have no power to do it, the courts will settle the matter right, and the rights of everybody will be protected. Nobody will be harmed by it, if you have no right to repeal it. But I do not put it upon this ground. I would ask your attention for a moment to look at the claim made—that a law passed by the legislature of 1860, a general law, not a contract with any human being, a law under which no man has invested a single cent, a law which no person could claim was a contract made with him in any way, a law passed by the legislature, and in which the legislature provided that the public, the Commonwealth, should do the deed that was to be done, cut down the dam, and pay the damages—when that law is passed, it becomes over and above all other laws; instead of a law of the legislature, subject to repeal by any subsequent legislature, it becomes like a law of the Medes and Persians, so fixed that it cannot be repealed. Why, gentlemen, the statement already made is a sufficient



answer. This is not a contract with other parties, not a law under which other parties have invested their money, which they have acted upon, which they have paid for, which they have a right say you cannot repeal unless you repay them what they have invested under it. Who is there in Billerica, in Sudbury, in Concord, or anywhere else, who has ever invested a dollar under this law ; who has ever paid any thing under this law, who has ever done any thing under this law in reference to whom it can be said, You cannot repeal that law because it takes from him the property that he has invested under it ? It does not approach that class of cases—and I think you will appreciate the argument here, gentlemen,—in which the legislature makes a contract with a corporation. There is no contract made here with any human being, and the same legislature that passed the law can repeal it, and nobody can say them nay,—more especially, sir, can it be repealed when no act has been done under it. Why, gentlemen, this same thing was ventilated before the last legislature ; and you will find an instance, in this connection, of what the committee considered, I think, rather sharp practice, to say the least. While the committee of the legislature were investigating this very question whether the law should be suspended or not, as you have heard it from Mr. Hudson, these meadow-owners were before the commissioners, undertaking to get them to do an act which would take from the legislature the power to suspend that law. They claim to have done some act, in reference to taking off the flash-boards, which would render it impossible that this Act should be repealed. That matter was dwelt upon last year, and you will see that the committee last year set their seal of condemnation upon that conduct, because they went on to provide specially that no act done under the Act of 1860 should in any way affect the right of any of the parties, should in no way interfere with the right of the legislature to suspend the Act. Why, gentlemen, they have no more right, of course, to suspend an Act a day than they have to repeal it utterly and entirely. If it is an Act under which rights are vested, you cannot interfere with it at all without compensation to the parties interested ; but any Act, not in the nature of a contract, may be repealed by any subsequent legislature. I feel, Mr. Chairman, that this must be apparent to the common sense

of every one. I know that you will not question, for a moment, that the same power which passed this law, which breathed into it life, which gave it power to injure, has the power to take away the life which was breathed into it. No man's rights can be said to have been taken away by this law. You passed it, you can repeal it. The time has gone by when it can be claimed, with reference to laws of this sort, that they can be passed by one legislature and cannot be repealed afterwards by those who come after them and sit in their seats.

#### CLAIMS OF THE PETITIONERS SUSTAINED BY THE COMMISSIONERS.

Now, gentlemen, passing from that,—because I do not believe that it is really relied upon to any great extent on the other side, and that you will give but a passing consideration to it,—I want your attention now to a consideration of the result which has been arrived at by this commission provided for last year. It turns out, by the report of these Commissioners, that what has been alleged throughout, by the parties at whose instance the Act of 1860 was passed, the grounds upon which they have always put their claim,—it turns out, I say, that these are all without foundation in fact, and that the claims which we, on our side, have made from the beginning to the end, which we began with in 1859, and said were then true, which we have said all along and down to the present time were true, have been entirely confirmed by the report of that commission. All this clamor on the other side, that the dam at Billerica, be it higher or lower than it was before 1798, has flooded, has drowned out, has destroyed the meadows in Sudbury and Wayland; all that, I say, is forever and entirely put an end to, because we have the report, from absolute experiment, that the whole of that dam, not any thing that may have been added to it in 1798 or in 1828, but that the whole of that dam, be it higher or lower, does not affect the water in the towns of Sudbury and Wayland, where more than three-quarters of these meadows are situate, at all; not only does not raise the water two feet upon them, and destroy them, or render them what they were not, before the dam was built, but it does not raise any water, substantially, upon those meadows. More than that—and I ask you to look at the argument of last year, and the evidence we offered in 1859—more than that,

this report shows this, that within half a mile from the dam, before you come to the meadow region, this dam would not affect the water quite eight inches. Such is the report of the Commissioners. What, then, is the proposition, gentlemen? I am not here to deal with the assertion of my friend on the other side, when he said that it was the merest absurdity to attempt to argue and assert, and attempt to make people believe that a dam that was higher than the bottom of a river for five-and-twenty miles, would not raise the water for five-and-twenty miles. I met that last year, and it is not necessary for me now to go into the minutiae and detail to the extent I did then. We have the conclusion of the committee, upon the evidence before them, that our dam would not raise the water in Sudbury and Wayland, would not raise the water at the Fordway, more than six or eight inches. That was the whole question. Will the dam raise the water more than six or eight inches at the Fordway? Our proposition was, and we had experiments to prove it, that it would not. This year we have had experiments made, which you are to take as conclusive, which show that the water is not affected at all by the dam, where the most of this complaint comes from, and that at the very commencement of the meadows, and within half a mile of the dam, it would not be affected quite eight inches by taking away the dam entirely. You have that fact, gentlemen, as a proposition proved by experiment. But notwithstanding all that, I find my friend who opened this case drawing upon his imagination, and my friend who closed the case yesterday again urging that it was nonsense to say, and that nobody would believe it, that a dam which was higher than the bottom of a river for five-and-twenty miles, would not affect the water at any point on the river where the bottom was below the dam. It is not necessary for me to controvert this, because a fact is stronger and better than the theory of any body. I do not care whether my friend's mind is strong and robust enough to control his own theories or not, as some men's are not; it is sufficient for us that you have the fact before you; you have the experiments, and according to the experiments, the dam does not affect the water, where most of the complaint is made, and does not raise the water, half a mile above the dam, quite eight inches.

But, gentlemen, if I desired, I could show you, as a matter of theory, deducible from the facts before you, that the dam could not affect the river up to the point they say it does. My friend harps constantly upon this fact, that the dam is higher than the bottom of the river. Gentlemen, you know, if he does not—and if you know it that is all I care for—that what makes a dam, what makes an obstruction of water, depends upon the space there is left for the water to pass along in; and if you have at the dam a certain space, 127 feet, to pass the water over, you may go up the stream to any point, and you may have the bottom of the river one, two, or three feet, or even more than that, lower than the dam, and the water will not be affected by it; but if you narrow that stream, if, instead of 140 feet, you narrow it to ten feet, you know that such a space will operate as a more effective obstruction to the water than your dam, though your dam be three or four feet higher than the bottom of the river, because there is not the space for the passage of the water there that there is at the dam. The result is, that this space being lessened—and it is immaterial, is it not, whether it comes from building a dam, or contracting the sides, or filling up from the bottom to the top, by weeds or rocks, or any other obstruction—the water cannot pass freely along, and it will be raised higher at that point, although the bottom of the river is lower than the dam. The obstruction caused by a dam, or any thing else, depends upon the capacity of the river to pass a certain quantity of water at the point in question. It is so here, gentlemen. Some of the witnesses have told you, that a lessening of the width of the space for the water to pass over, by weeds growing up, or by rocks deposited in the river, would effectually flood back the water, and therefore be as effectual a dam as the dam itself. Theory, gentlemen, is sufficient to account for the fact, if it were necessary to do it. I only allude to this to show you how our friends have been misled on the other side, by constantly harping upon the fact, that there is no point upon the river, for twenty miles, more or less, that is not actually lower than the top of the dam. Why, gentlemen, ordinarily, where a dam would effect the water up to a certain point, ten or fifteen miles, you would find a regular slope, would you not? But if, in any place, you found, from some cause or other, some

obstruction in the river, either by contracting the sides of the river or by putting obstructions in the bed, there was a distinct and different slope—that there was a rapid, a fall, which was not flowed out by the dam below, would you not be right, ordinarily, in saying that the effect of the dam below was lost when it came to this fall? When you have the slope broken, and have a comparatively rapid fall, you see that the effect of the dam below ends, ceases at that point. That would ordinarily be the case, and it is shown to be the case here, substantially.

Again: I want your attention for a moment longer upon this point, not because it is exactly necessary, for I am content to leave it with the finding of the Commissioners, but I want you to examine the testimony of one of the agents of these very parties, Mr. Simonds, of Bedford, who testified before the committee of 1859. It shows, sir, that some of these gentlemen are dealing with edged-tools, and sometimes get their fingers cut. He put in as a piece of testimony on his side of the house, and as drawing the minds of the committee to the result he sought, this statement, which you will find on page 158 of the report:—

“I also measured the depth of the water at a place a short distance above the dam, known as the Fordway, and found four feet in depth, in the current, or boat channel, at the same time—the 20th of May. May 25th the water had risen—at Carlisle Bridge, one foot seven inches; at the Fordway, one foot two inches; *and on the dam it had risen two and a half inches.*”

Now, sir, to what conclusion does that bring your mind? Don't you know, gentlemen, every one of you, that from that testimony of Mr. Simonds, the same result was necessarily to be arrived at that has been found by these Commissioners? What was it? Why, that the obstructions at the Fordway, and above the Fordway, are greater than the dam, and cause the flooding of the meadows more than the dam. Why? Because you find, that in five days, the same amount of water that passed by Carlisle Bridge, passed by the Fordway, and passed by the dam, would, on account of the obstructions, raise the river at the bridge one foot seven inches, and at the Fordway, for the same reasons, increase it one foot two inches, while at the dam the same water would pass off, on account of less obstructions,

causing a rise of only two and a half inches. Do you not see that the obstructions to the passage of the water as it flows are above the dam? The water rises miles above the dam. Why? Because it meets obstructions there; because from the bends and the bars in the stream, and a variety of obstructions, the capacity of the stream is not sufficient to pass it down readily; but when it gets down to the dam, the capacity is sufficient to carry it off, so that instead of rising, in five days, nineteen inches, as at Carlisle Bridge, or fourteen inches, as at the Fordway, it only rises two and a half inches. Do you not see that the capacity of the dam to pass water is greater than that of the river above, and that the trouble is, that the capacity of the stream is not sufficient, at many places, to carry off the water that comes down from above?

You are to deal with the report of the Commissioners as a fact; and you would have no difficulty in coming to the same conclusion without their report. You have this fact established, beyond question or peradventure, that if you cut away this dam, which is said to raise the water two feet five-and-twenty miles above, it will only reduce the water a little short of eight inches, half a mile above.

I want to call your attention to another proposition, gentlemen. I want you to look at these tables upon which this conclusion is based. These Commissioners, some of them certainly, have sided quite strongly enough against us in the conclusions they have come to, and I want you to turn to the facts they have stated, upon which those conclusions are based; because, if you will look at the table which gives the average height of the water, at the different stations, from the 2d to the 7th of August, you will find this remarkable state of things,—that for five days previous to the 7th day of August, when they began to draw down the dam, the natural fall of the river at Barrett's Bar, in Concord, was  $\frac{2.9}{10.0}$  of a foot. I beg your attention to this, gentlemen. For five days preceding the drawing at the dam, the fall from natural causes, just above Barrett's Bar, was  $\frac{2.9}{10.0}$  of a foot—a little short of four inches. That was the natural fall, before these experiments began. At the same place, from August 7th to August 12th—the drawing of the water beginning August 7th—you find that the fall of the water in five days was  $\frac{3.8}{10.0}$  of a foot. If you look at the table,

you will see that the other conditions affecting the result were about the same on the first five days as the last; that about the same amount of rain fell during the progress of each experiment; that there was about the same letting down from the Assabet during both periods.

What was the result? Why, you find that the difference between the fall at Barrett's Bar in the first five days and the last five days is just  $\frac{9}{100}$  of a foot! You may try the experiment, you may look at these tables and examine them through and through, and you will find that you cannot get, by drawing down the water, a fall of much more than an inch, above Barrett's Bar, in addition to the fall resulting from natural causes.

Then look at the Fordway, (Station 28,) and you will find that the difference between the fall of the river in the first period of five days, and the latter, was a fraction over five inches instead of eight inches. The Commissioners take the whole fall at that point and attribute it to the experiment, when three inches of it was due to the river being in a falling state at the same time the experiment was being made.

Now, gentlemen, the Committee say that the dam raises the water at the Fordway about eight inches; but the trouble is that when you come to look at their own figures, making part of their own report, you must really come to the conclusion that the experiment above the Fordway and above Barrett's Bar, only shows a reduction of about five inches at the former station, and one inch at the latter. That is very remarkable. If you look at the experiments reported by the committee of 1859, you will find that such would be the reduction, and the only reduction, which could be accomplished by drawing down the dam.

Again—simply to allude to this and pass from it—you will find, from the experiments made on the second, third, and fourth of November, which are reported on page 123, and those of the eighth, ninth, tenth and eleventh, on page 133, that there was a drawing of the water at the dam at those two points of time. You will find there, sir, that if you take the lowest point which the water reached at the dam, on each of those occasions, the lowest point it reached at the Fordway, and the lowest point it reached at Barrett's Bar,—and I beg,

gentlemen, that you will examine these experiments,—you will find, I say, the river being then clear of obstructions, that the lowest reduction at the Fordway was about four inches, and at Barrett's Bar from one to two inches ;—only going to show that the result we arrived at from an examination of their tables made in the summer, is verified by an examination of their tables made in the fall.

You find then, gentlemen, from the report of the Commissioners, the fact—and it is a fact that we have always claimed—that the dam at Billerica Mills, be it higher or lower than in 1798 or 1828, does not substantially injure the meadows in Sudbury and Wayland. You find that the rise of water half a mile above the dam, where the meadows commence, is less than eight inches, and that substantially runs out before you get to those places from which the main complaint comes,—where three-quarters of the injury is alleged to have been done,—where it is claimed that the water, in consequence of this dam, has flowed back some two feet.

#### INCREASE OF WATER ON THE MEADOWS, AND ITS CAUSE.

Now, gentlemen, I do not claim here, as I never have claimed upon any other occasion, that there may not be more water upon those meadows now than there was in years gone by. I have no doubt that the increase of water has been monstrously exaggerated, I am sure of it when we find a crop growing there in olden time which will only grow where the land is covered with water from one to three inches, in its ordinary summer condition ; but undoubtedly the meadows are wetter now than formerly—and why ? Because, since 1812 or '14, or '16, when we first began on a great scale, the business of manufacturing, when we first began to turn our saw-mills and grist-mills into mills for the manufacture of cotton, and wool, and iron, and wood,—from that time to the present there has been, in the summer, perhaps double the quantity of water running in the stream, in consequence of its being stored up in winter ; and, the stream having no increased capacity to carry it off, undoubtedly the meadows are wetter from that fact. There has been a constant increase, since 1812, of that business which requires the storing up of water in winter, and letting it



down in greater quantities in summer. The result is, that the water affects the meadows more now undoubtedly. I have so said always, and nothing different. I say it now, as I have always said it, and I ask you if I am not right. But while the meadows may be wetter, in consequence of what has been done, the extent of the increase has been enormously exaggerated, and we have contemporaneous testimony to that fact. The Commissioners tell you, that upon the Assabet and Sudbury rivers there are eighty-two mill-ponds or reservoirs for the storing up of water in winter, to be used in the dry season. Of course the meadows are wetter. Are we to blame for that? Are we to be punished for the sins of the eighty-two persons who pour water down this stream? We say that our dam does not affect these meadows; but they say, "True it is, you don't flow water back upon us, but so it is, that because there are some fifty manufacturers on these rivers, with reservoirs and mill-ponds to the number of eighty-two, who store up water in the winter, and pour it down upon us in the summer, our meadows are flooded; you don't do the evil, you don't flood our meadows, you don't throw the water back upon us, but we are going to punish you for the wrongs we receive from others." Is not that it? We don't do it, do we? There is an increased amount of water, but we don't flow it back upon their meadows, we don't contribute to that increase. But they say, "We have so much of this water poured down on our meadows from these eighty-two mill-ponds and reservoirs, that we must destroy you in order to remedy the evils we have received from others." Is not that it, gentlemen? But why should the sins of others (if they are sins) be visited upon our heads? Ordinarily, it is enough for any one to be held responsible for his own acts. We have shown by these experiments that we have done no harm to any one. Why then should these sins of the mill-owners above us, if they are sins, be visited upon us? These gentlemen complain that they have been injured. It is sufficient for us to answer—"You know from these experiments, if you can understand any thing, that we do not flow any of this water back upon you. If you are flooded, it is from other sources. Why should you visit upon us the evils and the misdeeds of other parties, over whom we have no manner of control?"

## THE DAM NOT RAISED IN 1798 OR 1828.

Let me have your attention, now, for a short time, upon a question which has been opened here, although I say, in all fairness, I do not think it has much to do with this hearing—that is this, whether the dam has been raised since the incorporation of the Middlesex Canal,—whether it was raised in 1798, or again in 1828. I do not think, really, whether raised or not raised, that it is of much importance in the consideration of this matter, and I believe you will come to the same conclusion, and for this reason,—whether we have any rights under the Middlesex Canal Corporation or not, we own the land, and under our laws, we have a right to build a dam upon the stream and throw back the water, provided we do not injure our neighbors. Is it not a sufficient answer for us to make, so far as any thing can be urged against us? Gentlemen, we claim that our dam injures no one. We have a right to build it, if such is the fact. It turns out, from experiment, that you who most complain, you who own the meadows in Sudbury and Wayland, have not an inch of water turned back upon you by our dam! Is not that a sufficient answer, I repeat, so far as we are concerned? Therefore, I say, it is entirely unimportant whether our dam was raised in 1798 or in 1828.

But the question may be of some importance in regard to another matter which has been introduced here. It is claimed here, by the gentlemen on the other side, that our dam was raised in 1798, and raised again in 1828. Upon the second proposition, so far as any reliance is to be placed upon human testimony,—so far as you can know from contemporaneous evidence, from the acts of parties, from the use of canals, the dam, in 1828, was no higher than it had been previous to that point of time, or than it had been, really, from the time the canal was commenced. You find, from the testimony of Mr. Baldwin, that in 1825, there was a bolt put in which regulated the height of the dam then, and it was the precise point which regulated the height of the dam in 1828, and which regulated the height of the dam in 1798. Further than that, gentlemen, if you will refer to the maps and drawings, in the report of the committee of 1859, which have not been controlled, or shaken in any way, about which there is no pretence

that they are not correct, you will find that the canal, at its greatest draught, would not give you more than three feet and six inches below the top of this bolt, and on an average not so great a depth. Now, it is a fact testified to, and not contradicted, that the original boats drew from three to three and a half feet of water; afterwards, they were of less draught, as Mr. Wilson tells you. Therefore you must know, taking that fact alone, that from 1798 down to 1828, the dam must have been as high as it was after 1828. You will see, by looking at the plan, that if the dam had been any lower, there would have been no way of filling the canal, or using it after it was filled. Now, gentlemen, the question is, was the dam raised in 1798? What is the evidence that it was so raised? We have not the slightest direct testimony to establish that as a fact. My friends on the other side say there was more water on the meadows above, after 1798 and 1828 than before, and that shows, they say, that there was a raising of the dam at those times. Don't you see how utterly unreliable such evidence is, because you find, by the experiments, that the dam, instead of raising the water two feet up in Wayland, does not raise it one inch! The whole argument falls to the ground. The testimony to the raising of the dam comes mainly from the fact, as they say, that the water flows back upon the meadows further and deeper than before 1798. All this evidence is utterly worthless, because you find that the dam, at the highest point it was ever raised, does not affect the water in Wayland at all. If the water has been raised there, the change has been effected by other causes.

Such is the evidence, and such are the facts, gentlemen, bearing on this proposition, and they are facts which address themselves to those of you who have had experience in such matters. The whole head and fall is as great now and no greater than it was in 1798—eleven feet. Looking at the little value of land then, compared with its value now, and at the fact that much more water was required at that time than at the present day to obtain the same power, owing to the ruder construction of machinery, do you believe that a dam with a head and fall of less than eleven feet would have been built and used at that time?

Again, gentlemen, look at the testimony of Mr. Theophilus Manning and Mr. Jonathan Manning—two old gentlemen introduced on the other side. Mr. Jonathan Manning tells you that the old dam, in existence before 1798, the Richardson dam, without flash-boards, flowed the water into the canal two and a half feet deep, and that the new dam, with the flash-boards on, as you know, only flowed the water three and a half feet into the canal. Then Mr. Theophilus Manning tells you, as you will find by looking at his testimony, that the old dam—the dam before the dam of '98—had flash-boards upon it from six to nine inches wide; he did not know precisely how wide; he did not measure them, and of course could not tell. From that testimony you not only get the fact that the old dam with its flash-boards was about the same height as the new dam built in 1798, also with its flash-boards on, but it answers another claim that has been set up here. What do they say? They say, and they have persisted in it from beginning to end, that the dam was raised in 1798 and 1828 to a height three and a half feet above the old dam which existed before '98; but you find, on the testimony of their own witnesses, that the old dam, without flash-boards, would flow the water into the canal two and a half feet deep, within a foot as deep as would the present dam. Yet my friends say the old dam was three and a half feet lower! at which height it wouldn't flow a particle of water into the canal.

#### THE MISTAKE IN REGARD TO FAULKNER'S RACEWAY.

One word, gentlemen, in reference to "Faulkner's Raceway," which my friend is to teach a starling to constantly scream in my ears. If I am never troubled with any thing but "Faulkner's Raceway," my sleep or dreams will never be disturbed. "Faulkner's Raceway" indeed! Except for the discordant tone in which my friend screams it to me, it gives me no trouble. Why didn't they come to me, if they thought there had been any mistake? Why didn't they go to that gentleman who sits there, [Mr. Talbot,] if they thought there had been any mistake? I say, and I have a right to say it, if any man thinks a mistake has been made, and will go to him, fairly and squarely, and say so, he will give every opportunity to set the matter right. I do not believe in going behind his back, and without his knowledge

interfering with his premises. I do not believe that any one of these Commissioners was ever appointed for that purpose. If they had gone to Mr. Talbot and said, "We think there is a mistake in that statement in reference to the measurements at Faulkner's Raceway, and we want to ascertain the facts," I pledge you my word that every opportunity would have been given them to examine and see if there was any mistake. That was not done. They, behind our backs, measured in the wrong place. The trouble with their discovery is this, that while our measurements were in the Raceway, their measurements were in the pond, under some dam—the Lord only knows what dam—you find it in their plan; in the pond, and beyond and above the Raceway. We have it here upon the testimony of old Mr. Manning, their witness, who says that he knew the Raceway long before the Middlesex Canal was thought of, that it has not been changed. We have it upon the testimony of every man who has been about those premises, that it has not been changed since 1793. I do not care, gentlemen, if, before that time, there were gates where they are put on the plan, four, five, or ten feet deep. What we want, and all we want, is this *fact*—that since 1793, before the dam was built, in 1798, the bottom of that Raceway has not been changed. And who says that it has? Our witnesses say it has not; their witnesses say it has not. They go into a pond above the Raceway and dig down, and they find some structures which tends to show that at some time or other—the Lord knows when—there was a gate that was lower than the mouth of the Raceway as it has been since 1793.

"Faulkner's Canal!" Do you think I am disturbed by that? Do you you think my clients are disturbed by that? Why, gentlemen, they do not touch our proposition or proof derived from that Raceway in any degree whatever. They have attacked something other than what we put in, than what we have set up or relied upon, and my friend and his starling may cry "Faulkner's Raceway" to their hearts' content, and it will not disturb any body's quiet but his own.

But I am entirely content, gentlemen, if that is more satisfactory to my friends on the other side, to leave Faulkner's Raceway out of the question. I should not have said any thing

about it, if so much noise had not been made by my friend on the other side, who seems to think that we are to be frightened by this bugbear, which has no existence except in his own imagination.

[Mr. GRIFFIN. We want it in.]

#### THE TESTIMONY OF THE PENSTOCK.

Mr. ABBOTT. Have it your own way. In or out, it is all the same to us. With or without Faulkner's Raceway, I can prove my proposition strong enough to satisfy any reasonable man. What do you say to the penstock? We have the measurement of the penstock from the Commissioners of this year. What was the penstock there for? It was to carry water, so it is sworn, to the wheel of the grist-mill by which the Billerica people, under the old grant, were to be furnished with meal; and I noticed that while my friend had so much to say about Faulkner's Raceway, he did not say a word about the old penstock. It reminded me (I don't want to say any thing offensive) of the old saw that one who is running off with something in his pocket belonging to somebody else, is often the loudest in crying "stop thief!" How far do you think the bottom of that penstock is below the dam? A little more than two feet—short of one inch more than two feet below the present height of the dam. When was that used? The dam, you recollect, was the dam of 1828, that flooded the meadows for five-and-twenty miles above, because it had been raised a foot or eighteen inches—they cannot tell precisely how much. Well, gentlemen, you will find by Mr. Wilson's testimony, that the penstock carried water to a grist-mill, which ground, as I said before, all the meal for the town of Billerica, for which the privilege was granted in 1708; and that mill got so old that in 1810 it was abandoned and given up as a broken down concern, and has not been used since. Upon the evidence, it was there long before, no doubt, the dam of 1798 was built, for in those times a mill would not be given up as old and ruinous from twelve years' use. The bottom of that penstock is two feet below the top of the present dam. Do you think that penstock was ever put in to be used unless they had a dam the top of which was at least two feet above the bottom

of the penstock? If this penstock had been used for more than a dozen years—given up, you recollect, in 1810, because the mill was old—the old dam before 1798 must have been as high as the present one.

I say again, gentlemen, I do not care any thing about Faulkner's Raceway. It may be put in or left out, just as it suits my friends on the other side. You have this fact of the old penstock upon uncontroverted evidence, and you cannot get over it. What had they to oppose it? They say we raised our dam in 1828, because we flow their meadows in Sudbury and Wayland; and we show that the dam, at its greatest height, does not throw a particle of water back upon those meadows. The whole argument falls to the ground.

#### OSGOOD'S DAM.

Again, gentlemen, the claim here yesterday was that in 1723 Osgood's dam was abated as a nuisance. Well, gentlemen, Osgood's dam, unless it was as high as the present dam, flashboards and all, would not have affected the water even at the Fordway. If it was a nuisance in Sudbury and Wayland, I reckon it must have been substantially as high as the dam of the present day, because that, as the experiments show, does not affect the meadows in Sudbury and Wayland at all.

There is another matter, gentlemen, to which I wish to allude. They tell you that the grant made to Osgood, in 1711, was made upon condition, that he should secure the town of Billerica from any charge that should arise from damage to lands in the towns above. Don't you see, gentlemen, that the dam must have been substantially as high as the present dam to have raised the water on the lands of the towns above?

Again, they say the town of Billerica undertook to indemnify one Toothacre for damage caused to his land by Osgood's dam. You will find a grant from the town to Toothacre to compensate him for the flowing of his meadow. You know, gentlemen,—those of you who are familiar with that locality—that from the Fordway down to the dam there is a rocky bottom, filled with stones; there are no meadows until you get above the Fordway. Toothacre's meadow, therefore, must have been above the Fordway. Toothacre's meadow, they said, was

flooded in 1711; and in order to flood the lands above the Fordway at all, you must have a dam substantially as high as that of the present day. Do you not see that this dam must have been substantially as high before 1798 as it is now?

#### THE QUESTION OF LEGAL RIGHT.

I am only referring to this as bearing upon another question, which has been alluded to by my friends on the other side. They say we have no right by our deed to hold the present height of the dam, and so the Commonwealth would not have to pay damages for taking away what we have no right to; they tell you, that we didn't buy the present height of the dam, we only bought the Richardson privilege; that the conveyance in that deed is of the Richardson privilege, reserving, at the same time, the right to Faulkner to draw down the water three-quarters of an inch below the top of the present dam. That is to say, it was the conveyance of a dam which was not within three feet and a half of the height of the present dam, with a reservation to Faulkner of a right to draw down the water half an inch below the top of the present dam! Our friends say that deed did not convey to us the right to keep the dam at its present height. You will find, if you look at the deed, that it conveys to us as all the right the canal proprietors ever had to this property, with all the rights, privileges, and easements belonging thereto, saving and excepting the right of Faulkner to draw down the water until it gets three-quarters of an inch below the bolt, which they say is "the lawful height of the dam." I have only to remark on this objection of our friends on the other side, that you need not trouble yourselves at all about the matter. If they are right, they have the most full and perfect remedy in the world in any court, under our general laws, made for them and for us. I should be glad to meet my friends there at any time and have them ventilate the proposition they have insinuated here, for the purpose of inducing the legislature to sustain them in the positions they have assumed. You find, however, the counsel, who have their professional reputation at stake, don't press this objection at much length, or with much confidence—it is insinuated for the purpose of using it when and where there is no one to meet and answer it.



## THE BENEFITS FROM THE ACT CONJECTURAL ONLY.

I wanted to say more upon this matter, gentlemen, because I thought it of some importance, but I see that I cannot, and must hasten to a close, merely alluding to what I wish to call your attention to. Some evidence has been offered here for the purpose of showing that if you cut down the dam, it will be of immense benefit to the meadow-owners above, not because it will relieve them from any damage we have done—because we have done them none—but because it will permit them to improve the natural condition of their meadows. To establish this, they have presented some estimates of what it would cost. Gentlemen, is the legislature to be called upon, at this time above all others, (for I think we shall feel and appreciate what taxes are within a year more than, fortunately, we have ever before,) is the legislature to be called upon to let a measure stand which will involve an expense to the Commonwealth, the amount of which no man can tell at present, but large, undoubtedly, because possibly the owners of these lands may sometime undertake to improve them? Every-body knows that cutting down that dam and reducing the water eight inches at the Fordway would not, of itself, benefit the land. Nobody would ask you to do it for that alone; but you are asked to do it because a thousand owners, more or less, of meadows, scattered along the river, may be able to do something else that will render the land more valuable. How do you know they will do it? You know that, in 1789, they asked for a commission to go down to the Fordway and clear out the river, the commission having power to collect the money of the proprietors to pay the expense. The governor and council took them at their word, appointed the commission, and then they had a three years' quarrel, the owners refusing to pay a cent for the work that had been done as low down as the Fordway. You are asked to do this act, not because it will do any body any benefit, but because it will enable these meadow-owners to do something to improve their lands. Do you know that all these meadow-owners—some owning an acre and some less—will come together and agree to make these improvements?

## COST OF THE PROPOSED ALTERATION TO THE LAND-OWNERS.

Let us see if we know what this will cost. According to the average of the estimates, it would cost something over twenty thousand dollars to get any benefit from the proposed alteration. How do you get at it? We all know—many of us to our cost—that in an undertaking like this, you cannot get any certain knowledge in reference to the expense. You may send your best engineers, and let them make their estimates in the most thorough and careful manner, and the probability is that those estimates will be doubled before the work is completed. This truth is written in the ruined fortunes of thousands and thousands who have invested their money upon the faith of estimates so made. Is it not the rule, in reference to new undertakings, where you cannot get sure and certain data to pass upon, that the estimates of the best engineers turn out to be largely exceeded when the work is done? What do you have here? In the first place, the estimates of half a dozen gentlemen who never have seen the place, who do not know any thing about it, who say they would not undertake the job at all without giving the whole matter a much more thorough examination. These estimates were based upon what? Based upon the information given by Mr. Shedd, one of the Commissioners. He tells you that he made no examination for the purpose of seeing what it would cost: that he does not know the nature and character of the formations where excavations are to be made; that he has not been there for the purpose of ascertaining how much the improvements would cost; and that all he bases himself upon is the information that was given him by others who are not under oath and who are not before you. When I asked him, “Sir, as an engineer, would you be willing to do that job without further and careful examination?” He said, frankly, “I would not.” “Would you undertake to let it to others?” “I would not.” Why, gentlemen, you not only have no estimates of engineers who have been on the ground and examined this matter, and satisfied themselves, but you have no estimates based upon any information that any human being says is safe to be relied upon. There is no obligation, on the part of any body, to improve these lands. No promise even that they will do it. You do not know that any body will do

it. You cannot say that any body has falsified himself if, after you have cut down the dam, no advantage is taken of it. They have not pledged themselves to do it, and you do not know—no human being knows—what it will cost.

#### COST TO THE COMMONWEALTH.

Then, sir, look on the other side for a moment. How much would it cost the Commonwealth? There you are entirely in the dark. You have some estimates from this young gentleman, Mr. Mills, in reference to the amount of the water-power. We have a head and fall of eleven feet, and for manufacturing purposes, he says, if you cut it down a quarter part, there will be sixty-one per cent. left. You, sir, would not pay in that ratio for it, for manufacturing purposes,—no man would. But I do not care to go into that. You have then some estimates in reference to the use of steam-power. Mark this, sir! If you are to supply the deficiency caused by the reduction of the dam by steam, you have to meet the expenses incident to the use both of water and steam-power. Here we have six wheels of Mr. Talbot, in different places, and he must have an engine in each place. Mr. Mills says that every wheel is to be altered, that the canals, running through rocky bottoms, are all to be lowered, and the basements of the mills also are all to be altered. Has any body told you how much all this is to cost? You do this thing, and Mr. Talbot will consider himself well off if he gets the alterations made, so as to use his water-power, for fifteen or twenty thousand dollars. How long will it take to do it? This is not a job that could be done in less than three months. For twenty days, when only half of Mr. Talbot's mills were running, for twenty days, your Commissioners have said, Mr. Talbot, Mr. Faulkner, and the Belvidere Company, are entitled to five and forty hundred dollars as damages. Mr. Talbot says, in his testimony, page 293, that when he is in full work he uses, in the business of grinding dye woods, from 120 to 130 horse-power; and he knows, no one better—I do not care what the estimate is on the other side. He uses 50 horse-power in the woollen factory,—making from 170 to 180 horse-power. Then there is Faulkner's mill, with some 50 horse-power more. Mr. Talbot has, in addition to this, an immense surplus power,

which can be used nine months in the year: and in addition to this, he has the old grist-mill, in which he is obliged to grind for the town of Billerica. My friends on the other side have brought in some testimony in reference to the cost of steam-engines, and I am content to take that, (though it is worth nothing,) as far as it goes. They say that a steam-engine will last twenty years. I think that is rather longer than they will average, but take it at twenty years. A steam-engine of seventy-five horse-power, not by the way large enough to make up our loss, costs \$7,500. It will cost \$10.50 a day for fuel, and \$3 a day for extra help, besides \$750 per year for repairs. Why, sir, to obtain a sum sufficient to reproduce a seventy-five horse-power engine every twenty years, and keep it in operation, it must be from \$100,000 to \$150,000 at least. And this is without any thing for increased risk or the buildings necessary for the engines. Why, gentlemen, talk about expense here! Cut down this dam, and let us go to a jury from the neighboring towns, and let us bring in an exact estimate of what it will cost, and, I was going to say, I would almost give up the trying of cases, if I could not convince any jury that ever sat in Middlesex County that \$200,000 would not cover the damages to these several parties that will be done by this operation. Why, they show themselves that it must be from one hundred to one hundred and fifty thousand dollars, beyond all controversy. And you are asked to do it upon what evidence? Not upon any evidence that any body will be benefited by it; but because, when this is done, and you have incurred this enormous expense, *it may be, possibly it may be*, that a great number of meadow-owners will join together and tax themselves to the extent of twenty thousand dollars, at least, and it may be double—you cannot tell—and so improve and benefit the land above the dam. If they do this, they will find, when they have drained the water out of the land, that the water will not be the only thing that will fall. If these lands have been kept for the growing of “pipes,” with water upon the surface, for the last two hundred years, from  $1\frac{1}{3}$  to  $3\frac{2}{3}$  inches deep, let them draw it down two feet below the surface, and they will find that the land will sink a little as well as the water. I know enough to know that, without professing to be much of an agriculturist, for I have

seen lands that have been covered in this same way, when the water was drained off the surface, settle down, to a certain extent, following the fall of the water.

#### THE TESTIMONY UNCERTAIN AND UNSAFE.

Well, gentlemen, you are asked to do all this upon uncertain testimony, not proper, not fair, not right to be acted upon, upon which you would not act in any matter in which you were concerned. The witnesses themselves say they would not act upon it. Upon such unsafe, unsatisfactory, and dangerous grounds you are asked to take our property from us, to interfere with the prosperity of the town of Billerica, that town appearing here in opposition to the measure,—you are asked to do it, not because, under the law passed in 1793, an injury has been done, and in payment for that injury, but you are asked to do it in order to enable somebody, whom you do not know, to improve upon the natural condition of these meadows. You are asked to assume an expense,—you do not know how large, only you know it will be very large; you are asked to inaugurate a new policy; you are asked to say that the Commonwealth shall come in and assume the responsibility and expense of draining the lands of the Commonwealth at this time; you are asked to commence this new policy, which will be the beginning of an end which will not be in your generation or in mine. The next you will hear will be from the Charles River and the Neponset River, and a thousand and one other streams; and when you have set this example, and thus told the people of the Commonwealth that you will spend one or two hundred thousand dollars to enable the meadow-owners on the Sudbury and Concord rivers to improve their lands, how can you reply to the people on Charles River, or on any other river in the Commonwealth, that you will not do the same thing for them? Are you prepared, gentlemen, upon this evidence, are you prepared upon any thing that appears in this report, to say to the people of the Commonwealth: “We will from this time commence a new policy; we will now, in order to enable certain meadow-owners to improve and render more valuable their meadows,—not because, as they say, we have injured them without paying them for it,—we will take one or two hundred

thousand dollars from the treasury of the Commonwealth at least, and if the policy is established, take sums untold from the same treasury, already burdened enough " ?

#### CONCLUSION.

There are many other matters, gentlemen, which I desired to open before you and enlarge upon, but I have already taken more time than I ought to have done. I have already wearied myself, certainly, if I have not exhausted your patience. I have only to say that I thank you heartily and sincerely for the kindness and patience with which you have listened to me, and must now trust the whole matter in behalf of my clients to your wisdom, to your sound practical common sense.



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